

E-Filed 10/5/2009

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN JOSE DIVISION**

CHIN-LI MOU,

Plaintiff,

V.

WEST VALLEY COLLEGE, et al.,

Defendants.

Case Number C 09-1910 JF (RS)

ORDER¹ DENYING MOTION FOR RECONSIDERATION

Re: Docket No. 46

I. Background

On August 4, 2009, Plaintiff Chin-Li Mou (“Plaintiff”), proceeding *pro se*, filed a motion for “Relief from the Judgment - Fraud and Misconduct,” requesting that the Court set aside its order dated June 29, 2009, denying Plaintiff’s request for a preliminary injunction against Defendant West Valley College (“WVC”) and several of its employees. By order dated September 30, 2009, the Court vacated the hearing on the motion and indicated that it would treat Plaintiff’s motion as a motion for reconsideration.

Plaintiff claims that Defendants violated her civil rights by having her arrested illegally, suspending her from school without due process, violating her right to equal protection of the laws, and improperly restricting her right of free speech. She originally sought injunctive relief

¹ This disposition is not designated for publication in the official reports.

1 cancelling the suspension and immediately reinstating her in the classes in which she was
 2 enrolled prior to the suspension. Defendants assert that Plaintiff habitually failed to leave a
 3 campus restroom when requested to do so by custodial staff, acted belligerently toward the
 4 custodian, and harassed and threatened various members of the WVC staff. Defendants also
 5 allege that it was necessary for them to call the police to remove Plaintiff from the campus.

6 Plaintiff met twice with Ernest Smith, Vice President of Student Services at WVC, to
 7 discuss the incident, as a result of which Dr. Smith suspended Plaintiff for the remainder of the
 8 spring semester and for the current fall semester. Plaintiff claims that her spring semester
 9 classes, including a class she had finished in March, were dropped from her transcript without a
 10 "W" ('withdrawal') notation. Plaintiff appealed the suspension. A hearing was scheduled before
 11 the Student Disciplinary Hearing Board ("the Board") on June 2, 2009. Plaintiff did not appear
 12 personally at the hearing, claiming that it occurred too late in the semester to provide her with
 13 effective relief, but the proceeding took place in her absence. Following the hearing, the Board
 14 concluded that the suspension was proper. Plaintiff was notified of the decision on June 11,
 15 2009.

16 In her papers filed in support of the instant motion, Plaintiff alleges that she did not attend
 17 the June 2, 2009 disciplinary hearing for the following additional reasons: (1) the meeting did not
 18 occur at the time she had originally set aside based on an email from a WVC employee; (2) it
 19 was difficult for her to reschedule medical appointments that she had set previously; and (3) she
 20 intended to seek relief in this Court as an alternative to the administrative hearing because she
 21 believed that WVC was maliciously and willfully delaying the appeal process. Plaintiff's Motion
 22 at 3-4, Ex. C-F. WVC states that it responded promptly to Plaintiff's request for an
 23 administrative hearing and that when Plaintiff complained that the original hearing date of May
 24 13 was too soon, it rescheduled the hearing to June 2, which was the next available date.

25 Plaintiff now appears to be seeking a preliminary injunction compelling Defendants to
 26 schedule a further administrative review of her suspension, as well as sanctions against
 27 Defendant's counsel Eric K. Shiu for allegedly filing and scheduling a motion for summary
 28 judgment on August 28, 2009, the date of a hearing in an unrelated case filed by Plaintiff in this

1 Court. *Mou v. City of San Jose et al.*, Case No. 5:07-cv-05740 (filed May 1, 2009).

2 **II. LEGAL STANDARD**

3 “The traditional equitable criteria for granting preliminary injunctive relief are: (1) a
 4 strong likelihood of success on the merits; (2) the possibility of irreparable injury to the plaintiffs
 5 if injunctive relief is not granted; (3) a balance of hardships favoring the plaintiffs; and (4)
 6 advancement of the public interest.” *Textile Unlimited, Inc. v. A..BMH and Co., Inc.*, 240 F.3d
 7 781, 786 (9th Cir. 2001), citing *Los Angeles Mem'l Coliseum Comm'n v. Nat'l Football League*,
 8 634 F.2d 1197, 1200 (9th Cir. 1980). “A preliminary injunction is not a preliminary adjudication
 9 on the merits, but rather a device for preserving the status quo and preventing the irreparable loss
 10 of rights before judgment.” *Textile Unlimited*, 240 F.3d at 786, citing *Sierra On-Line, Inc. v.*
 11 *Phoenix Software, Inc.*, 739 F.2d 1415, 1422 (9th Cir. 1984).

12 **III. DISCUSSION**

13 The additional evidence and argument presented by Plaintiff in the instant motion do not
 14 alter the reasoning or conclusions contained in the Court’s order of June 29, 2009. Plaintiff still
 15 has failed to meet her burden of demonstrating irreparable injury. The paralegal program in
 16 which Plaintiff was enrolled has many reasonable substitutes, and Plaintiff has not shown that
 17 she is unable to enroll in a different program. Plaintiff’s new argument that WVC scheduled her
 18 disciplinary hearing at a time that made it difficult for her to attend does not affect this
 19 determination.

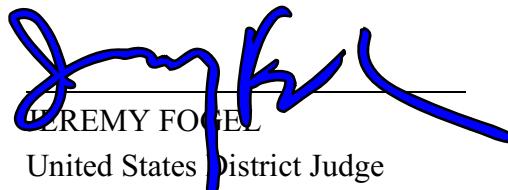
20 Nor do Plaintiff’s additional arguments regarding the scheduling of the disciplinary
 21 hearing affect the Court’s previous determination that the balance of hardships tips against
 22 Plaintiff, as the hardship to WVC caused by a repeatedly disruptive student is greater than the
 23 hardship to Plaintiff of possible delay in getting a degree. *See Boucher v. School Bd. of School*
 24 *Dist. of Greenfield*, 134 F.3d 821, 826-28 (7th Cir. 1998). The additional evidence submitted by
 25 Plaintiff in fact was considered by the Court in connection with its original order: the record
 26 reflects that the emails concerning the scheduling of Plaintiff’s disciplinary hearing were
 27 submitted at that time as Exhibit P to the Declaration of Ernest Smith.

1 Finally, Plaintiff's request to sanction WVC's counsel Erik K. Shiu for scheduling a
2 summary judgment motion hearing on the same date as Plaintiff's hearing in another case is
3 without merit. Mr. Shiu has not filed a motion for summary judgment in this case. Rather, a
4 clerical error by Court staff confusing this case with Plaintiff's other case, in which a motion for
5 summary judgment in fact was heard on August 28, 2009, apparently led to a misunderstanding
6 on Plaintiff's part.

7 **IV. ORDER**

8 Good cause therefore appearing, IT IS HEREBY ORDERED that the motion for
9 reconsideration is DENIED.

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12 DATED: October 5, 2009

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16 JEREMY FOGEL
17 United States District Judge
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1 This Order has been served upon the following persons:

2 John A. Shupe , Esq jas@bovetprofessional.com, marcia@bovetprofessional.com

3 Chin-Li Mou

4 4141 Boneso Circle

5 San Jose, CA 95134

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